

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

C.A.L.L. Group, Inc.

v.

Case No. 08-CV-391-PB

Exxon Mobil Corporation, et al.

O R D E R

\_\_\_\_\_The central question presented by C.A.L.L.'s motion for remand is whether one or more of its claims are completely preempted by the Petroleum Marketing Practices Act ("PMPA").<sup>1</sup> If the answer to this question is yes, then remand is not warranted.

The parties have failed to analyze this issue under the appropriate legal standard. The most recent Supreme Court case that addresses this subject is Beneficial Nat'l Bank v. Anderson, [539 U.S. 1](#) (2003), and the most recent First Circuit case is Fayard v. Ne. Vehicle Servs., [533 F.3d 42, 45](#) (1st Cir. 2008). Fayard describes a two-part test in which a court must ask whether there is "exclusive federal regulation of the subject matter of the asserted state claim" and then determine whether there is a "federal cause of action for wrongs of the same type"

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<sup>1</sup> C.A.L.L. filed an "Objection to Remand" ([Doc. No. 5](#)) which I treat as a motion because it seeks affirmative relief.

as any of the causes of action alleged in the complaint. Id.

Because the parties have not attempted to analyze the remand issue under this standard, I cannot tell from their memoranda whether any of plaintiff's claims are completely preempted. In particular, I need to know whether the complaint asserts claims for wrongful nonremoval or termination and, if so, whether such claims are completely preempted under the two-part test announced in Fayard. Accordingly, I deny the motion to remand ([Doc. No. 5](#)) without prejudice to the plaintiff's right to file a new motion to remand within 30 days.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

May 8, 2009

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